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September 12, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Re: Comment to August 9, 2019 Proposed Rule (CMS 1717-P), “Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children’s Hospitals-Within-Hospitals”

Dear Administrator Verma:

In the calendar year (CY) 2020 Outpatient Prospective Payment System (OPPS) proposed rule, the Centers for Medicare and Medicaid Services (CMS) proposed to allow grandfathered children’s hospitals-within-hospitals (HwH) to increase their number of beds without losing grandfathered status. University Hospitals Rainbow Babies & Children’s Hospitals (“Rainbow”), located in Cleveland, Ohio is a grandfathered HwH. **Rainbow strongly supports the proposed change and commends CMS for taking action that will considerably increase access to pediatric care in our community.**

Background:

An HwH is a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Effective October 1, 1995, CMS established specific separateness and control requirements that an HwH

would have to be met in order to be considered a separately certified hospital. A grandfathered HwH in existence on or before September 30, 1995 does not have to meet those requirements as long as it continues to operate under the same terms and conditions as of that date, including the number of beds.

Rainbow and University Hospitals Cleveland Medical Center (“UHCMC”), together with their predecessors, have been affiliated since 1926. The current facilities of these hospitals have been located on the same campus since 1971, and the two hospitals combined under a single board of directors in 1974. Both of these events occurred long before the 1983 implementation of the IPPS. As the arrangements between Rainbow and UHCMC were in place before September 30, 1995, Rainbow is a grandfathered HwH that is precluded from increasing its number of beds to retain its grandfathered status.

Rainbow effectively operates as a separate hospital, in a separate building, focused only on the care of children. It employs more than 1,500 pediatric care specialists, operates the only Level I Pediatric Trauma Center in the northern half of Ohio, and has long been ranked as one of the best children’s hospitals in the nation. The decision made nearly 50 years ago to locate Rainbow and UHCMC on the same campus made a great deal of sense from the perspective of clinical care—the basis for our continued foundation of care. This shared campus is immediately adjacent to the Case Western Reserve University School of Medicine, which trains both adult and pediatric physicians. Rainbow engages in the education of pediatric specialists, while UHCMC engages in the education of adult specialists.

Why are Medicare’s Rules Problematic?

Rainbow is unable to meet the HwH requirements due to its shared governance structure, and so has operated under grandfathered status since 1995 when CMS first established the HwH rules. As a result, Rainbow has been unable to expand the number of beds it offers to its pediatric patients in response to changes in the healthcare marketplace for more than 20 years. Rainbow has been unable to:

- Add new inpatient units specifically designed and devoted to cutting-edge medical developments such as cancer immunotherapy;
- Expand the size of its medical education residencies to increase the number of physicians trained to treat diseases and injuries of childhood; and
- Increase its size commensurate with the increased consolidation in the Northeast Ohio region driven by value-based care delivery reforms such as accountable care and population health.

CMS’ HwH Policy Concern does not Apply to Children’s Hospitals

In the proposed rule, CMS indicates that its original concerns for establishing the HwH rules was that “the unregulated linking of an IPPS hospital and a hospital excluded from the IPPS could lead to two Medicare payments for what was essentially one episode of patient care.” Rainbow did not co-locate itself with UHCMC for this reason. Rainbow and UHCMC’s configuration was established long before there was an IPPS much less the HwH rules.

CMS itself acknowledges in the rule that children's hospitals receive a low-level of Medicare reimbursement and that its regulatory change "would allow these hospitals to address changing community needs for services without any increased incentive for inappropriate patient shifting to maximize Medicare payments." Less than 1% of Rainbow's reimbursement derives from the Medicare program and there are no patients who are admitted as UHCMC inpatients and then discharged and admitted as Rainbow inpatients, or vice versa.

CMS did not specifically raise concerns about the potential impact on Medicaid payments. Nevertheless, we note that in the enclosed letter (Appendix A), the Director of the Ohio Medicaid Department states "the change sought by Rainbow would have no adverse impact on Ohio Medicaid, given the way our hospital reimbursement regulations are structured and administered."

Relative Advantage is Not Present

The proposed change to remove the restriction on children's hospitals with grandfathered HwH status from increasing its number of Medicare-certified beds does not confer any special advantage to Rainbow relative to other children's hospitals. To the contrary, based on our review, we believe that Rainbow is the only children's hospital in the nation unable to expand its Medicare-certified beds. This is a situation where a Medicare regulation, and nothing else, has itself created a disadvantage to a single hospital, for reasons unrelated to children's hospitals. The proposed change permits Rainbow to expand and respond appropriately to increased community demands in the same manner as other children's hospitals.

Thank you again for consideration of our comments. We look forward to working with the agency as it finalizes the CY 2020 HOPPS Proposed Rule (CMS-1717-P). The update for grandfathered children's hospitals-within-hospitals will greatly aid Rainbow and its dedicated clinicians to continue servicing patients in and around the surrounding community.

Sincerely,

A handwritten signature in cursive script that reads "Patti DePompei".

Patti DePompei
President

Appendix A



Department of Medicaid

Mike DeWine, Governor
Jon Husted, Lt. Governor

Maureen M. Corcoran, Director

August 28, 2019

The Honorable Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Room 445-G
Washington, DC 20201

Re: Comment to August 9, 2019 Proposed Rule (CMS 1717-P), “Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children’s Hospitals-Within-Hospitals”

Dear Administrator Verma:

In January, I joined Governor DeWine’s team as Ohio’s Medicaid Director. His vision for children was the most important factor in my decision to join his administration. Throughout my career, I have had the good fortune to work with a broad group of phenomenal professionals, organizations, families and consumers who focus on improving the lives and health of children. This group has consistently included the children’s hospital community. Ohio is home to some of the best children’s hospitals in the world, including University Hospitals Rainbow Babies & Children’s Hospital in Cleveland, Ohio.

I am writing to you regarding a federally imposed limit implemented in the 1997 federal regulation, 42 CFR 412.22(e). Rainbow is the only Ohio children’s hospital that is impacted by this CMS-imposed bed limit. On behalf of Ohio and our Medicaid Agency, I applaud CMS for the proposed change to amend change 42 CFR 412.22, the Hospital within Hospital (HwH) regulation, which removes the restriction on grandfathered children’s HwHs’ ability to expand their number of Medicare-certified beds.

I understand that a series of modifications have been discussed with the Centers for Medicare and Medicaid Services (CMS) aimed at permitting Rainbow to expand its bed size – modifications that are in response to modernize its hospitals and to meet the increased demand for services. Rainbow serves many children and their families in the Cleveland area,

The Honorable Seema Verma, MPH
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and is a significant provider for children who are covered by Ohio Medicaid. Their leadership and capacity are important to our program. The change sought by Rainbow would have no adverse impact on Ohio Medicaid, given the way our hospital reimbursement regulations are structured and administered.

We commend the agency for simplifying the regulatory oversight on children's hospitals and believe strongly that the change goes to great lengths by assuring all children's hospitals can expand their beds to address their community's needs. As a result, I urge you and the leadership of CMS to finalize this proposed change to the HwH regulation as this critical update will assure Rainbow can better plan for patient needs and the demand for high quality care. Ohio is pleased the agency adjusted the regulation so that it is confined to children's hospitals, since Rainbow is Ohio's only free-standing children's hospital subjected to the federal regulatory constraint. Finally, we do not believe this confers any advantage to children's hospitals like Rainbow.

Thank you for consideration of this request. If you have any questions or need additional information, please feel free to contact me. My administrative assistant, Sherri Trott, can be reached at 614.752.3786.

Sincerely,



Maureen M. Corcoran
Director